



United States Attorney
Southern District of New York

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March 30, 2023

By ECF

The Honorable Lorna G. Schofield
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Bailey Aldrich v. United States of America*, No. 22 Civ. 5297 (LGS)

Dear Judge Schofield:

This Office represents the United States of America (the “Government”) in the above-referenced personal injury action brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.* We submit this joint letter motion on behalf of all parties to update the Court on the status of the case in accordance with Section 13(b) of the Amended Scheduling Order, ECF 29, and Individual Rule IV.A.2, and to request an extension of expert discovery deadlines.

The Court previously granted the parties’ joint request to extend the fact discovery deadline to March 30, 2023, and to refer this case to the Magistrate Judge for settlement. ECF 28. On February 28, 2023, the parties met via telephone for a pre-settlement conference call with Magistrate Judge Figueredo, who set a settlement conference for March 23, 2023. ECF 31, 32. After this call, the parties engaged in further discussions and determined, due to certain changed circumstances, that a settlement conference at this stage would no longer be fruitful. Specifically, after the conference was set, Plaintiff determined through consultation with Plaintiff’s medical expert that a second surgery, a fusion of the upper foot, will be required in the very near future. This led to increased settlement expectations.

This case concerns a slip and fall at the loading dock of the Lenox Hill Post Office. The Government believes that it has a strong liability defense; specifically, that the landing at issue from which Plaintiff fell, was open and obvious and not dangerous or defective. In turn, Plaintiff strongly believes the Government is liable in this case, as the United States Postal Service did not meet its duty of care, and the landing was dangerous and defective. After the completion of discovery, the Government anticipates that it will seek the Court’s permission to move for summary judgment. Both parties agree that it appears that any potential summary judgment should be decided before future substantive settlement discussions can continue.

In advance of such a motion, Plaintiff anticipates that it will disclose an expert engineer’s report and an orthopedic surgeon’s report documenting the need for the future fusion surgery, to which the Government anticipates disclosing a rebuttal expert reports. Plaintiff also anticipates that it would serve further rebuttal reports; the Government does not object to this, but requests

that it be given the opportunity to depose Plaintiff's experts after all of Plaintiff's experts' reports are submitted.

The parties are currently scheduled to complete fact discovery by March 30, 2023 and are on track to do so. The parties have been engaged in document discovery as follows: On October 10, 2022, Plaintiff send the Government 71 document requests and 25 interrogatories. On February 3, 2023, Plaintiff sent an additional 18 document requests to the Government. To date, the Government has produced about 1,500 pages of discovery to the Plaintiff, including documents with its initial disclosures. The Government has also subpoenaed multiple third parties and provided records it received, from eight third-parties, to Plaintiff. On September 30, 2022, the Government sent Plaintiff 25 document requests and 21 interrogatories. On February 17, 2023, the Government sent an additional 4 interrogatories and 2 document requests. To date, Plaintiff has produced about 485 pages of records, including documents with her initial disclosures.

Depositions have been completed as follows: The Government took Plaintiff's deposition on January 27, 2023. Plaintiff deposed post office employees Roger Russell, on February 1, 2023, and Nicole Marra, Elmer Mendez, Eric Wilkins and James Heege from March 22-24, 2023. The Government understands from Plaintiff that according to the court reporters from these depositions, it is unclear when these transcripts will be available and that such transcripts are expected to be incorporated into Plaintiff's initial expert disclosures.

Accordingly, the parties have conferred and request that the deadlines for Plaintiff's expert disclosures be set for May 3, 2023, the Government's expert opposition reports to be due by May 24, 2023, Plaintiff's rebuttal reports to be due by June 14, 2023, and expert discovery to concluded on July 12, 2023 with expert depositions taking place after Plaintiff's rebuttal reports are submitted by June 14, 2023. The parties also request that a pre-motion conference be set the week of July 31, 2023, and that any pre-motion conference submission to be made ten (10) business days prior to the conference, with any response five (5) business days after. The parties request this specific extension, in part because Plaintiff's counsel is currently scheduled to engage in jury selection and a trial from May 22, 2023 to June 9, 2023, and will be travelling out of the country from June 16, 2023 to June 26, 2023.

This is the parties' second joint request for an extension of discovery deadlines. We thank the Court for its consideration of this letter.

Respectfully,

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